

Arterial pCO ₂ (mm Hg)	Arterial pO ₂ equal to or less than (mm Hg)
25 or below	75
26	74
27	73
28	72
29	71
30	70
31	69
32	68
33	67
34	66
35	65
36	64
37	63
38	62
39	61
40-49	60
Above 50	(¹)

¹ Any value.

(2) For arterial blood-gas studies performed at test sites 3,000 to 5,999 feet above sea level:

Arterial pCO ₂ (mm Hg)	Arterial pO ₂ equal to or less than (mm Hg)
25 or below	70
26	69
27	68
28	67
29	66
30	65
31	64
32	63
33	62
34	61
35	60
36	59
37	58
38	57
39	56
40-49	55
Above 50	(²)

² Any value.

(3) For arterial blood-gas studies performed at test sites 6,000 feet or more above sea level:

Arterial pCO ₂ (mm Hg)	Arterial pO ₂ equal to or less than (mm Hg)
25 or below	65
26	64
27	63
28	62
29	61
30	60
31	59
32	58
33	57
34	56
35	55
36	54
37	53

Arterial pCO ₂ (mm Hg)	Arterial pO ₂ equal to or less than (mm Hg)
38	52
39	51
40-49	50
Above 50	(³)

³ Any value.

PART 722—CRITERIA FOR DETERMINING WHETHER STATE WORKMEN'S COMPENSATION LAWS PROVIDE ADEQUATE COVERAGE FOR PNEUMOCONIOSIS AND LISTING OF APPROVED STATE LAWS

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AUTHORITY: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq., Secretary's Order 7-87, 52 FR 48466, Employment Standards Order No. 90-02.

SOURCE: 38 FR 8328, Mar. 30, 1973, unless otherwise noted.

INTRODUCTORY

§ 722.101 Purpose and scope of this part.

Section 421 of part C of title IV of the Federal Coal Mine Health and Safety Act, as amended, provides that on and after January 1, 1974, any claim for benefits for death or total disability due to pneumoconiosis shall be filed pursuant to the applicable State workmen's compensation law, except that during any period when miners or their eligible surviving dependents are not covered by a State workmen's compensation law which provides adequate coverage for pneumoconiosis, such persons shall be entitled to claim benefits under section 422 and related provisions of part C of title IV of such Act.

Section 421(b)(1) in part C of title IV of the Federal Coal Mine Health and Safety Act, as amended, provides that a State workmen's compensation law shall not be deemed to provide adequate coverage for pneumoconiosis during any period unless it is included in the list of State laws (see § 722.152) found by the Secretary of Labor to provide adequate coverage for pneumoconiosis during such period. Section 421(b)(2) of such Act provides that no State workmen's compensation law shall be included on such list during any period unless such law is consistent with each of the criteria mandated by paragraphs A through E of section 421(b)(2) of the Act, as amended, and that there are certain other provisions, regulations, or interpretations which are consistent with the Longshoremen's and Harbor Workers' Compensation Act, as amended (44 Stat. 1424, 86 Stat. 1251, 33 U.S.C. 901 et seq.), as described in this part. This part 722 is designed to assure that any State law which appears on the list herein described shall provide appropriate claimants with adequate benefits for total disability or death due to pneumoconiosis. The purpose of this part is to describe the procedures by which the Secretary shall determine whether any State workmen's compensation law does, in fact, provide adequate coverage for death or disability due to pneumoconiosis and further describes with particularity the standards and criteria to be applied by the Secretary in making such determination.

§ 722.102 Definitions and use of terms.

(a) For purposes of this part except where the content clearly indicates otherwise, the following definitions apply:

(1) *Act* means title IV of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 795 (30 U.S.C. 901 et seq.), as amended by Pub. L. 92-302, 86 Stat. 156, the Black Lung Benefits Act of 1972.

(2) *Longshoremen's Act* means the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 86 Stat. 1251 (33 U.S.C. 901 et seq.)), as amended by Pub. L. 92-576, 86 Stat. 1251.

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(3) *Social Security Act* means the Social Security Act (49 Stat. 620 (42 U.S.C. 301 et seq.)), as amended from time to time.

(4) *Department* means the Department of Labor.

(5) *Secretary* means the Secretary of Labor or a person authorized by him to perform his functions under section 421 of the Act.

(6) *State* includes a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(7) *Workmen's compensation law* means the law or laws of a State providing for payment of compensation by employers to employees (and their dependents or survivors) for injury including occupational disease, or death suffered in connection with the employment.

(8) *State agency* means, with respect to any State, the agency, department, or officer designated by the workmen's compensation law of the State to administer such law. In any case in which more than one agency participates in the administration of a State workmen's compensation law, the Governor may designate which of such agencies shall be the State agency for purposes of this part.

(9) *The Secretary's list* means the list published by the Secretary of Labor in the FEDERAL REGISTER (see § 722.152) containing the names of those States which have in effect a workmen's compensation law which provides adequate coverage for death or total disability due to pneumoconiosis.

(10) *Pneumoconiosis* means coal workers' pneumoconiosis as defined in section 402(b) of the Act.

(b) Masculine gender includes the feminine, and the singular includes the plural.

(c) No definition contained in this part shall be deemed to derogate from the meaning of any term defined in the Act or any term elsewhere defined in this subchapter B with respect thereto.

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PROCEDURE FOR DETERMINING WHETHER A STATE LAW PROVIDES ADEQUATE COVERAGE FOR PNEUMOCONIOSIS

§ 722.103 Application to the Secretary.

The Governor of any State or any duly authorized State agency may, at any time after the effective date of this revised part 722, request that the Secretary include such State's workmen's compensation law on his list of those State workmen's compensation laws providing adequate coverage for total disability and death due to pneumoconiosis.

§ 722.104 Contents of application, supporting documents.

Each request that a State be included on the Secretary's list shall be in writing and shall be accompanied by the following documents and information:

(a) A copy of the State workmen's compensation law and any other pertinent State laws;

(b) A copy of any regulations either proposed or promulgated in final form with respect to the administration of the State law or laws submitted;

(c) A copy of any administrative or court decision interpreting State laws or regulations so as to bring such laws or regulations in compliance with the standards set forth in this part. If such decisions are published and reported in official or privately published reporter systems or in some other readily available case reporter, it shall be permissible to refer to such decision by its appropriate citation in such case reporter; and

(d) Each request shall be accompanied by a written analysis completed by a duly authorized State official describing by citation, explanation, or with reference to the decisional law of the State, the appropriate provision or provisions of such State's workmen's compensation law which bring it in compliance with each standard prescribed in this part 722.

§ 722.105 Initial action on the request.

Upon receipt by the Secretary of a request that a State be included on the Secretary's list, action shall be taken

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to review such request. Each State law submitted shall be reviewed in light of the specific standards and criteria set forth below.

CRITERIA: STANDARDS OF COVERAGE, ELIGIBILITY

§ 722.110 Coverage generally.

The following §§ 722.111–722.114 describe the individuals who are eligible to claim benefits for total disability or death due to pneumoconiosis under the Act. In order that a State workmen's compensation law be deemed by the Secretary to provide adequate coverage for total disability or death due to pneumoconiosis, such State law shall insure that such individuals shall be entitled to receive benefits under conditions in accordance with those described below.

§ 722.111 Miner.

(a) An individual shall be entitled to receive benefits for total disability due to pneumoconiosis if he is a miner as defined in this section and if such individual is totally disabled due to pneumoconiosis (see §§ 722.117–722.120).

(b) Such individual shall be entitled to receive benefits until his death or until such disability ceases.

(c) For purposes of this part an individual is a miner if he is or was employed in a coal mine.

(d) For purposes of this part, "Coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from the work of extracting in such area bituminous coal, lignite, or anthracite, from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities.

(e) Any State workmen's compensation law which does not separately define miner or coal miner shall be deemed adequate for purposes of this section if such law contains a definition or use of the terms employee, worker, or any other related term which is sufficiently broad to encom-

pass all individuals contemplated by the term miner as defined in this section.

§ 722.112 Widow, surviving divorced wife.

(a) An individual shall be entitled to claim for and receive benefits as the widow or surviving divorced wife of a deceased miner if:

(1) Such individual is not married and is the "widow" of such miner as defined in section 402(e) of the Act; and

(2) Such miner's death or total disability at time of death was due to pneumoconiosis (which, for purposes of the Act, includes any death of a miner who was totally disabled by pneumoconiosis or was receiving benefits for such disability at the time of his death).

(b) A widow or surviving divorced wife shall be entitled to receive benefits until she remarries, or dies, or her entitlement otherwise ceases.

§ 722.113 Child.

(a) An individual shall be entitled to claim for and receive benefits if:

(1) Such individual is a child, as defined in section 402(g) of the Act (including a stepchild) of a deceased miner or of the widow of a miner; and if

(2) Such individual was dependent upon the deceased miner or widow for his support; and if

(3) Such deceased parent,

(i) If a miner, was receiving pneumoconiosis benefits at the time of his death, or his death was due to pneumoconiosis, or at the time of his death was totally disabled by pneumoconiosis; or

(ii) If a widow, was receiving pneumoconiosis benefits at the time of her death.

(b) A child or stepchild shall be entitled to receive benefits until one of the following events first occurs:

(1) The child dies;

(2) The child marries;

(3) The child attains age 18, unless

(i) He is a "full time" student as defined in section 202(a)(7) of the Social Security Act, or a "student" as defined in section 8101(7) of title 5, United States Code, in which case such child's

or stepchild's eligibility is extended until he reaches age 23; or unless

(ii) He is under a disability as defined in section 223(d) of the Social Security Act and such disability began before he attained age 18 (see 202(d)(1)(B)(ii) of the Social Security Act).

(c) A child or stepchild is not entitled to claim benefits for any month for which a widow of a miner establishes entitlement to benefits.

§ 722.114 Parents, brothers, or sisters.

(a) An individual shall be entitled to claim for and receive benefits if:

(1) Such individual is the parent, brother, or sister of a deceased miner; and if

(2) Such individual, for not less than 1 year prior to the miner's death, was living in the same household as the miner and was totally dependent on the miner for support; and if

(3) The deceased miner was entitled to benefits at the time of his death, or his death is determined to have been due to pneumoconiosis, or at the time of his death was totally disabled by pneumoconiosis; and,

(4) In the case of a parent, if the deceased miner was not survived by a widow or child at the time of his death; and,

(5) In the case of a brother or sister, if the deceased miner was not survived by a widow, child or parent at the time of his death; and,

(6) In the case of a brother, he also is under 18 years of age unless he is a full-time student or under a disability as described in § 722.113(b)(3) in which case his eligibility shall be extended as is appropriate.

(b) No benefits to a sister or brother shall be payable for any month beginning with the month in which he or she receives support from his or her spouse, or marries.

(c) The individuals described in this section shall be eligible to claim for or receive benefits until such time as the requirements for eligibility cease.

CRITERIA: CLAIMS FOR BENEFITS

§ 722.115 Claims generally.

In order to assure that a State workmen's compensation law will provide adequate coverage for total disability

or death due to pneumoconiosis, such law shall contain or shall be implemented by available rules and regulations which establish a comprehensive and viable scheme for the filing and processing of claims. If filing and processing procedures in any State are substantially informal, such State shall include in its application to be included on the Secretary's list, a full description of such State's filing and processing procedures, copies of any material disseminated to individuals to assist them in pursuing a claim, and a full description, including exemplary cases, of the time periods required by such State to fully process such claims. No State workmen's compensation law shall be included on the Secretary's list if it appears that any class of claimants shall be subject to inordinate delays, unnecessarily protracted proceedings, unnecessarily difficult requirements of proof, or other unwarranted difficulties in the pursuit of a claim.

§ 722.116 Time limitations on filing claims.

(a) No State workmen's compensation law shall be deemed to provide adequate coverage for total disability or death due to pneumoconiosis unless the determination of claims filed pursuant to it shall be permitted:

(1) In the case of claims for disability benefits, if filed within 3 years of the date of the discovery of total disability due to pneumoconiosis; or

(2) In the case of claims for death benefits, if filed within 3 years of the date of such death;

(3) And in the case of any claim for benefits predicated upon the presumption contained in section 411(c)(4) of part B of title IV of the Act (see § 722.119);

(i) If in the case of total disability due to pneumoconiosis it is filed within 3 years from the date of last exposed employment in a coal mine; or

(ii) If in the case of death from a respiratory or pulmonary impairment for which benefits would be payable under section 411(c)(4) of the Act, incurred as a result of employment in a coal mine, it is filed within 15 years from the date of last exposed employment in a coal mine.

(b) Any State workmen's compensation law which provides longer periods for filing a claim subsequent to the events specified in this section shall be deemed to have met the requirements described herein. Any State workmen's compensation law which provides shorter time limitations on filing a claim, or which commences the period for filing a claim beginning with an event which is more restrictive than those specified in this section, shall be deemed not to have met the requirements of this section.

CRITERIA: MEDICAL STANDARDS FOR DETERMINING WHETHER MINER'S TOTAL DISABILITY OR DEATH WAS DUE TO PNEUMOCONIOSIS

§ 722.117 Medical criteria—generally.

Section 402(f) of the Act authorizes the Secretary of Health, Education, and Welfare to establish and promulgate standards and medical criteria for determining whether a miner is totally disabled due to pneumoconiosis, whether a miner's death was due to pneumoconiosis, and whether a miner was totally disabled by pneumoconiosis at the time of his death. Section 421(b)(2)(C) of the Act requires that in order for a State to be included on the Secretary's list, such State must promulgate standards for determining death or total disability due to pneumoconiosis which are substantially equivalent to those promulgated by the Secretary of Health, Education, and Welfare (see 20 CFR part 410, subpart D) and adopted pursuant to sections 415(a) and 422(c) of the Act by the Secretary of Labor in respect of claims filed subsequent to June 30, 1973 (see 20 CFR part 718). Therefore, no State shall be included on the Secretary's list if it does not by statute or published formal rules and regulations provide standards which are substantially equivalent to or less restrictive than those standards published by the Secretary of Health, Education, and Welfare in subpart D of 20 CFR part 410 as amended on September 30, 1972 (37 FR 20641-20645).

§ 722.118 Medical evidence.

No State workmen's compensation law shall be included on the Sec-

retary's list unless such law or regulations promulgated thereunder provide that no claim shall be denied solely on the basis of a chest roentgenogram and, that in determining the validity of claims all evidence shall be considered, including, where relevant, medical tests such as blood gas studies, X-ray examination, electrocardiogram, pulmonary function studies, or physical performance tests, and any medical history, evidence pertaining to future employability, evidence submitted by a miner's physician, or a miner's wife's affidavits, and in the case of a deceased miner, autopsy, biopsy, or other appropriate affidavits of persons with knowledge of the miner's physical condition, and any other supportive materials.

§ 722.119 Medical presumptions.

Section 411(c) of part B of title IV of the Act establishes a series of presumptions which shall be available to claimants for purposes of determining whether a miner's death or total disability was due to pneumoconiosis. No State workmen's compensation law shall be included on the Secretary's list if it does not provide or if regulations promulgated pursuant to such State law do not make available to claimants presumptions which are equivalent to or less restrictive than those presumptions contained in section 411(c) of the Act as set forth below:

(a) If a miner who is suffering or suffered from pneumoconiosis was employed for 10 years or more in one or more coal mines, there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment;

(b) If a deceased miner was employed for 10 years or more in one or more coal mines and died from a respirable disease, there shall be a rebuttable presumption that his death was due to pneumoconiosis;

(c) If a miner is suffering or suffered from a chronic dust disease of the lung which (1) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (2) when

diagnosed by biopsy or autopsy, yields massive lesions in the lungs, or (3) when diagnosis is made by other means, would be a condition which could reasonably be expected to yield results described in paragraph (c) (1) or (2) of this section if diagnosis had been made in the manner prescribed in paragraph (c) (1) or (2) of this section, then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis, as the case may be; and

(d) If a miner was employed for 15 years or more before July 1, 1971, in one or more underground coal mines, and if there is a chest roentgenogram submitted in connection with such miner's, his widow's, his child's, his parent's, his brother's, his sister's, or his dependent's claim and it is interpreted as negative with respect to the requirements of paragraph (c) of this section, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled by pneumoconiosis. In the case of a living miner, a wife's affidavit may not be used by itself to establish the presumption. A State shall not apply all or a portion of the requirement of this paragraph that the miner work in an underground mine where it determines that conditions of a miner's employment in a coal mine other than an underground mine were substantially similar to conditions in an underground mine. Such presumption may be rebutted only by establishing that (1) such miner does not, or did not, have pneumoconiosis, or that (2) his respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

§ 722.120 Total disability determination.

The Act requires that benefits be paid for total disability of a miner if pneumoconiosis prevents him from en-

gaging in gainful employment requiring the skills and abilities comparable to those of any employment in a mine or mines in which he previously engaged with some regularity and over a substantial period of time. No State workmen's compensation law shall be included on the Secretary's list if such law prohibits a finding that a miner is totally disabled solely on the basis of his ability to engage in gainful noncoal mine related employment, except that in cases where a miner engaged in noncoal mine related employment utilizes skills comparable to those required in his coal mine employment, it may be found that such miner is not entitled to benefits for total disability due to pneumoconiosis.

§ 722.121 Cause of death.

Section 421 of the Act requires the Secretary to find, before including a State workmen's compensation law in his listing of laws which provide adequate coverage for pneumoconiosis, that such law assures payment of benefits for total disability or death of a miner, determined under standards substantially equivalent to those established under part B of title IV of the Act, in all cases where either such total disability or such death was due to pneumoconiosis. Accordingly, in the case of death benefits, such benefits must be paid whether the miner's death or his total disability at the time of death was due to pneumoconiosis. Thus, sections 401 and 430 of the Act require that benefits be paid (a) for death due to pneumoconiosis and (b) for death due to any cause if the miner was totally disabled by pneumoconiosis at the time of his death. No State workmen's compensation law shall be included on the Secretary's list unless it contains a provision or provisions equivalent to those described in this section.

CRITERIA: ADMINISTRATIVE STANDARDS

§ 722.122 Administrative standards—generally.

In order to insure that each claimant for pneumoconiosis benefits under a State workmen's compensation law be afforded full due process of law, including notice and opportunity to be heard

on all matters materially affecting such claimant's claim, no State workmen's compensation law shall be included on the Secretary's list unless it provides, or regulations promulgated pursuant to such law provide (a) that a claimant in a contested case shall have a right to a full adversary hearing to resolve contested issues of fact or law, (b) that a claimant shall be notified of and shall have a means of legal recourse by right in the event that any adverse action is taken in respect of his claim, and (c) that a claimant shall in appropriate cases be entitled to have his claim finally adjudicated by an appellate court of the State.

§ 722.123 Cessation of payment of benefits.

No State workmen's compensation law shall be included on the Secretary's list unless such law provides, or regulations promulgated pursuant to such law provide, that in the event the payment of benefits to any beneficiary is terminated or suspended for any reason, such beneficiary shall be given prior notice thereof and shall have an opportunity to be heard in a formal proceeding before an appropriate adjudication officer of the State in respect of such suspension or termination, and that such investigations, including medical examination, shall be undertaken as will properly protect the rights of all parties.

§ 722.124 Regulation of fees for legal services.

Unrestricted fees for legal services incurred by a claimant in the pursuit of a claim undermine the intent of Congress expressed in the enactment of title IV of the Act. Section 28 (33 U.S.C. 928) of the Longshoremen's Act, as incorporated by section 422(a) of the Act, requires the Secretary to exercise reasonable control over professional fees for services incurred by a claimant in the pursuit of a claim. Accordingly, no State workmen's compensation law shall be included on the Secretary's list if such law permits unrestricted or unreasonable fees for services rendered in the pursuit of a claim to be charged to a claimant.

CRITERIA: GUARANTEE OF BENEFITS TO ELIGIBLE INDIVIDUALS

§ 722.126 Guarantee of benefits—generally.

It is the intent of the Act to insure that every eligible individual who has proven his entitlement to benefits for total disability or death due to pneumoconiosis shall be guaranteed such benefits whether or not there is in existence an employer, coal mine operator, or insurance carrier who is or may be adjudicated liable for the payment of such benefits. No State workmen's compensation law shall be included on the Secretary's list unless such law explicitly provides that every claimant who is, based upon the medical evidence and the evidence of such claimant's identity as a miner or eligible relation or dependent, entitled to receive benefits for total disability or death due to pneumoconiosis shall be paid such benefits either by a responsible coal mine operator or employer or such operator or employer's insurance carrier, or by the State from its general revenue or whatever funds are available for such purposes. A State must bear the ultimate liability for the payment of benefits to an entitled individual in all cases where no other source of benefits is available to such claimant.

§ 722.127 Voluntary and elective compensation systems.

A State workmen's compensation law may be included on the Secretary's list, notwithstanding the fact that such law permits voluntary or elective participation by an employer or coal mine operator in any program to insure the payment of benefits for total disability or death due to pneumoconiosis: *Provided*, That there is in effect in such State an alternative system to guarantee that all benefits including medical benefits shall be paid.

§ 722.128 Responsible coal mine operators.

Sections 421 and 422 of part C of title IV as well as the legislative history of the Act, indicate that Congress intended the coal mine operators in the several States to bear as fully as possible the liability for the payment of

pneumoconiosis benefits. In accordance with this intent Congress in section 421(b)(2)(E) of the Act has required that no State workmen's compensation law shall be included on the Secretary's list, unless such law provides that a coal mine operator who acquired his or its mine or substantially all of the assets thereof from a person (hereinafter referred to in this section as a "prior operator") who was an operator of such mine on or after December 30, 1969, shall be liable for and shall secure the payment of all benefits which would have been payable by the prior operator with respect to miners previously employed in such mine if the acquisition had not occurred and the prior operator had continued to operate such mine, and further that such prior operator shall not be relieved of his or its liability for the payment of pneumoconiosis benefits in the event that his successor to such mine is for any reason unable to discharge his liability (see section 422(i) of the Act).

§ 722.129 Insurance, self insurance.

(a) A State workmen's compensation law may, in appropriate circumstances, be excluded from the Secretary's list if such law permits coal mine operators or employers to obtain commercial contracts of insurance to guarantee the payment of pneumoconiosis benefits and such State law does not require (1) that such commercial insurer be authorized under the laws of the State to insure workmen's compensation, and (2) that each such commercial contract of insurance contain a provision that insolvency or bankruptcy of the insured or discharge therein (or both) shall not relieve the insurance carrier from liability for all current and future payments of benefits due an entitled individual.

(b) A State workmen's compensation law may, in the discretion of the Secretary, be excluded from the Secretary's list if it is apparent that self-insurance arrangements permitted under such State law in general are not sufficient to insure the uninterrupted payment of benefits to an entitled individual.

(c) Contribution or apportionment of liability among insurers and/or self-insurers, if so provided for by a State

workmen's compensation law, shall not be a basis for exclusion of such law from the Secretary's list.

(d) This section shall not be construed to require that a State workmen's compensation law guarantee the payment of pneumoconiosis benefits by means of commercial insurance or self-insurance programs.

§ 722.130 State protections of benefits.

No State workmen's compensation law shall be included on the Secretary's list, unless such State law establishes and provides a means of obtaining revenues to insure that pneumoconiosis benefits shall be paid to entitled individuals for whom no other source of benefits is available.

§ 722.131 Contributions by miners.

No State workmen's compensation law shall be included on the Secretary's list if such law permits or requires miners to provide funds for the payment of insurance premiums, the support for a self-insurance fund, or the support for any State fund established for the purpose of insuring the payment of pneumoconiosis benefits.

§ 722.132 Waiver of right to benefits.

No State workmen's compensation shall be included on the Secretary's list if such law permits a miner or other prospective claimant to by any means waive, in whole or in part, such individual's rights to receive full benefits for total disability or death due to pneumoconiosis. However, under appropriate circumstances, a waiver may be permitted in respect of the liability of any individual coal mine operator or employer if such State workmen's compensation law contains a provision or provisions which otherwise insure that benefits shall be available to be paid to such claimant from some other approved source.

§ 722.133 Retroactive coverage required.

No State workmen's compensation law shall be included on the Secretary's list if such law prohibits the filing of or does not provide for benefits in respect of an otherwise timely (see § 722.116) and valid claim solely on the grounds that the miner on whose total

disability or death the claim is predicated was not employed in a coal mine in such State on the effective date of such State's law.

§ 722.134 Residency requirements.

No State workmen's compensation law shall be included on the Secretary's list if such law requires that the claimant be domiciled in or a resident of such State at the time the claim is filed. This section shall not be construed to prohibit a State from refusing to process a claim for benefits in any case in which the miner on whose total disability or death a claim is predicated, was not exposed for a reasonable period of time in such State.

CRITERIA: AMOUNT OF BENEFITS:
MEDICAL BENEFITS

§ 722.135 Amount of benefits, computation.

(a) Section 412(a) of the Act sets forth the amount of benefits for total disability or death due to pneumoconiosis to which an individual shall be entitled, the extent of such entitlement and persons so entitled. No State workmen's compensation law shall be included on the Secretary's list if it does not, in every case, provide benefit amounts which are substantially equivalent to or greater than those amounts to which an eligible individual would be entitled under section 412(a).

(b) No State workmen's compensation law which arbitrarily limits the total amount of benefits to which an eligible individual may be entitled over such individual's lifetime shall be included on the Secretary's list.

(c) No State workmen's compensation law which subsequent to the effective date of this part 722 is amended to reduce the amount of benefits to which an eligible individual is entitled for total disability or death due to pneumoconiosis shall be included on the Secretary's list.

§ 722.136 Augmented benefits.

As set forth in section 412(a) of the Act the amount of benefits to which a beneficiary is entitled may be augmented by up to 100 percent based upon the number of persons (wife, children, parents, brothers, sisters) dependent

upon such beneficiary for support. No State workmen's compensation law shall be excluded from the Secretary's list because it does not contain similar augmentation provisions if such law otherwise insures that beneficiaries and their dependents shall receive benefits substantially equivalent to or greater than the amounts such persons would receive under section 412(a) of the Act.

§ 722.137 Minimum benefit amounts.

No State workmen's compensation law shall be included on the Secretary's list if it does not guarantee that the minimum amount of benefits payable to any beneficiary or dependent shall be substantially equivalent to or greater than the amount to which such beneficiary or dependent would be entitled if the claim were paid under section 412(a) of the Act, notwithstanding any provision contained in the State workmen's compensation law which requires the computation of benefit amounts based upon the miner's average weekly or monthly wage.

§ 722.138 Offsets for Federal benefits prohibited.

No State's workmen's compensation law shall be included on the Secretary's list if such law requires that pneumoconiosis benefits payable to any individual shall be offset by any amount to which such individual is or may be entitled on account of total disability or death due to pneumoconiosis under any law of the United States.

§ 722.139 Lump sum awards; settlement.

No State workmen's compensation law shall be excluded from the Secretary's list solely on the grounds that such law permits lump sum awards, or commutation or settlement of claims or awards: *Provided*, That (a) such lump sum award or commutation or settlement is approved by an appropriate State agency; (b) such lump sum award, commutation, or settlement is equal to the present value of future benefits payments commuted, computed at no less than 4 percent true discount compounded annually; (c) accepted and reliable tables of probabilities are used for the purpose of

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computing the present value of future benefits payments commuted and (d) no lump sum award, commutation, or settlement, shall be construed to deprive a miner of his right to future medical benefits or services under such State law.

§ 722.140 Protection of benefits.

No State workmen's compensation law shall be included on the Secretary's list unless such State law contains a provision or provisions:

(a) Which declare invalid any assignment or release of benefits or future benefits payable;

(b) Which exempt all current and future benefits from all claims of creditors, and from levy, execution, attachment, garnishment, or any other remedy for recovery or collection of a debt, which exemption may not be waived; and

(c) Which insure that any person entitled to benefits for total disability or death due to pneumoconiosis shall have a lien against the assets of the responsible insurance carrier or coal mine operator for such benefits without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the insurer or operator, or both, be entitled to preference and priority in the distribution of the assets of such insurer or operator, or both. This paragraph shall not be construed to require the creation of a statutory lien against the assets of any State fund.

§ 722.141 Payment periods.

No State workmen's compensation law shall be included on the Secretary's list unless such law provides that compensation payable on account of total disability or death due to pneumoconiosis shall be paid not less frequently than once each month.

§ 722.142 Prompt payment of benefits.

No State workmen's compensation law shall be included on the Secretary's list unless such law provides some means such as judicial enforcement whereby an eligible claimant shall have effective recourse to insure that benefits due such claimant are paid fully and promptly.

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§ 722.143 Medical benefits.

(a) Section 422(a) of the Act by incorporating section 7(a) of the Longshoremen's Act (33 U.S.C. 907(a)) requires that medical services and supplies be furnished to a miner totally disabled by pneumoconiosis. No State law shall be included on the Secretary's list unless such State law guarantees that every miner who is totally disabled due to pneumoconiosis shall be furnished, at no cost to the miner, with such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the disability may require.

(b) No State law shall be included on the Secretary's list if such law places arbitrary time or dollar limitations on a totally disabled miner's entitlement to the medical benefits described in this section.

§ 722.144 Medical examinations, reexaminations.

No State workmen's compensation law shall be included on the Secretary's list unless such State law provides that medical examinations or reexaminations conducted in respect of a claim at the request or order of an insurance carrier, coal mine operator, employer, or State agency shall be conducted at the expense of the insurance carrier, coal mine operator, employer, or State agency as the case may be. In no event shall the cost of such examination or re-examination be chargeable to the claimant.

§ 722.145 Vocational rehabilitation.

(a) Section 422(a) of the Act, by incorporating section 39 of the Longshoremen's and Harbor Workers' Compensation Act requires the Secretary to arrange for and direct the vocational rehabilitation of miners totally disabled for work in or around a coal mine. No State workmen's compensation law shall be included on the Secretary's list unless such State law makes available to miners totally disabled for such work such vocational rehabilitation facilities as are provided by the State under its workmen's compensation programs to disabled employees in general.

(b) No State workmen's compensation law shall be included on the Secretary's list if the use of vocational rehabilitation facilities in such State would result in a partial or total loss of benefits to such miner.

ACTION BY THE SECRETARY

§ 722.146 Standards for review of a State workmen's compensation law.

(a) The standards for determining whether a State workmen's compensation law provides adequate coverage for total disability or death due to pneumoconiosis as set forth in this part are mandatory, in that compliance therewith is prerequisite to inclusion of any such law on the Secretary's list. Such standards have been determined to be the minimum requirements that a State workmen's compensation law must meet in order that the intent of section 421 of the Act be carried out. After review of the information submitted by a State pursuant to § 722.104 and any other information made available to the Department of Labor, the Secretary shall determine whether a State workmen's compensation law meets all of such requirements.

(b) Notwithstanding any other provision of this part, if it is shown, despite the language contained in a State workmen's compensation law, that because of judicial or administrative decision, or duly promulgated rules and regulations, or common practice in the State, such law does not provide adequate coverage for total disability or death due to pneumoconiosis, such law shall be excluded from the Secretary's list.

(c) Notwithstanding any other provision of this part, if it is found that any provision contained in a State's workmen's compensation laws or general laws serves or would be likely to serve to diminish the coverage available in such State for total disability or death due to pneumoconiosis, such State's workmen's compensation law may be excluded from the Secretary's list.

§ 722.147 Action subsequent to review.

(a) If it is found that a State workmen's compensation law during any period provides adequate coverage for total disability or death due to pneu-

moconiosis, such law shall be included for such period on the Secretary's list to be published in the FEDERAL REGISTER and set forth in § 722.152 pursuant to section 421(b)(1) of the Act. The appropriate State agency shall be notified of the Secretary's action.

(b) If it is found that a State workmen's compensation law submitted for consideration pursuant to § 722.103 does not provide adequate coverage for total disability or death due to pneumoconiosis during any period, the appropriate State agency shall be notified of such decision and, if such law has previously been on the Secretary's list, of the fact that the decision requires deletion of such law from the list during such period. Such notice shall contain a brief statement of reasons enumerating the provision or provisions of the State's law which are unacceptable.

(c) In the event of a denial of a request that a State workmen's compensation law be included on the Secretary's list, or of a decision to delete a previously listed law from the list, the appropriate State agency shall have the right to request the Secretary to reconsider his action. Such request shall be accompanied by a brief or memorandum in support thereof.

§ 722.148 Provisional approval.

The Secretary may, in his discretion, provisionally approve a State's request that its workmen's compensation law be included on the Secretary's list pending the final promulgation of rules and regulations or the effective date of certain amendments to the State's law. Notice of such provisional approval shall be given to the appropriate State agency, but such State's workmen's compensation law shall not be published on the Secretary's list in the FEDERAL REGISTER until such regulations or amendments are effective.

§ 722.149 Judicial review.

The action by the Secretary in including or failing to include any State workmen's compensation law on the Secretary's list shall be subject to judicial review exclusively in the U.S. Court of Appeals for the circuit in which the State is located or in the U.S. Court of Appeals for the District

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of Columbia (see section 421(b)(2)(f) of the Act).

§ 722.150 Reports.

The Secretary shall from time to time require that each State which has been included on the Secretary's list submit reports, data, or other information to the Secretary concerning the administration and operation of the State's workmen's compensation law with respect to total disability or death due to pneumoconiosis.

§ 722.151 Removal from the Secretary's list.

At any time after a State's workmen's compensation law has been included on the Secretary's list such State's law may be removed from the list if it appears that under such law adequate coverage for total disability or death due to pneumoconiosis is not being provided. Such removal action shall be taken only after notice and an opportunity to be heard has been afforded such State. In the event a State's workmen's compensation law is removed from the Secretary's list the consequences of such removal on claims for pneumoconiosis benefits filed in that State shall be determined by the Secretary.

§ 722.152 The Secretary's list.

(a) In order to provide a ready reference source for any person interested in knowing at any given time which, if any, States' laws met the currently applicable criteria for approval, it has been determined that provision should be made for listing such States in the Code of Federal Regulations. Accordingly, the Secretary's list of those States having in effect a workmen's compensation law which provides adequate coverage for total disability or death due to pneumoconiosis, as published in the FEDERAL REGISTER pursuant to section 421(b)(1) of the Act, appears in paragraph (b) of this section. When first published on September 7, 1972 (37 FR 18076; see also 37 FR 21429), as provided by the Act, the document listed no such State because there was no State workmen's compensation law which had been found to provide adequate coverage for total disability or death due to pneumoconiosis. The Sec-

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retary's list shall be republished in the FEDERAL REGISTER with amendments from time to time as is necessary.

(b) The Secretary, upon examination of State workmen's compensation laws pursuant to the provisions of section 421 of the Federal Coal Mine Health and Safety Act of 1969, as amended, and §§ 722.101—722.151, has found that the workmen's compensation law of each of the following listed States, for the period from the date shown in the list until such date as the Secretary may make a contrary determination, provides adequate coverage for pneumoconiosis:

<i>State</i>	<i>Period commencing</i>
None	_____

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

Subpart A—General

Sec.

- 725.1 Statutory provisions.
- 725.2 Purpose and applicability of this part.
- 725.3 Contents of this part.
- 725.4 Applicability of other parts in this title.
- 725.101 Definitions and use of terms.
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Subpart B—Persons Entitled to Benefits, Conditions, and Duration of Entitlement

- 725.201 Who is entitled to benefits; contents of this subpart.

CONDITIONS AND DURATION OF ENTITLEMENT

- 725.202 Miner defined; condition of entitlement, miner.
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BENEFITS ON ACCOUNT OF LIVING DEPENDENTS (AUGMENTED BENEFITS)

- 725.204 Determination of relationship; spouse.
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- 725.207 Determination of dependency; divorced spouse.
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- 725.209 Determination of dependency; child.
- 725.210 Duration of augmented benefits.
- 725.211 Time of determination of relationship and dependency of spouse or child for purposes of augmentation of benefits.